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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

NO. 236.

THOMAS O'CONOR, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS.

BRIEF OF DEFENDANT IN ERROR.

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THE STATE PRINTING CO., AUSTIN, TEXAS.

275-306-60

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### STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

The State of Texas, through her Attorney General, entered suit in the district court of Travis County, against Thomas O'Conor, the plaintiff in error, to recover 19,410 13-100 acres of land situated in Webb County, Texas. This suit was brought pursuant to the Act of the Legislature of Texas, approved September 9, 1901. The provisions of the Act applicable to this case are sections first and eleven, which are in the following language, viz:

Section 1. "That any person or persons who may be the original grantee, heir, legal assign, or in any manner the owner or claimant of any grant, tract or survey of land, or part thereof, situated between the Nueces and Rio Grande rivers and below a line drawn from the Northern boundary of Webb County to the mouth of Moros Creek where the same empties into the Nueces river and emanating, or claimed to have emanated, from the Spanish or Mexican governments, and having its origin at such time as to be, and being within the protection guaranteed by the treaty of Guadalupe

Hidalgo entered into between the United States and Mexico, and proclaimed on the 4th day of July, A. D. 1848, may file a petition in the district court of Travis County, Texas, against the State of Texas as defendant for the confirmation of the title thereto, and also for the adjudication of his, her or their title, right, interest or claim therein or thereto, as against the State; which petition shall be filed with the district clerk of the county in which suit is brought, at least twenty days before the time of holding the next succeeding term of the district court in and for such county, and shall contain a full description of the grant, tract or survey of land claimed, setting forth particularly its situation, boundaries and extent, and the ownership, right, interest or claim of the plaintiff or plaintiffs, and each of them, in and to said land, and the source from which said ownership, right, interest or claim emanates, and shall accompany and file with such petition the titles or evidences of titles, or right, or true copies thereof, and if in a foreign language in addition true translations thereof, under which the same is held or claimed, or if such ownership, right, interest or claim of plaintiff does not have its origin in, or is not based upon such written evidences of title, right, interest or claim, then a statement in writing, setting forth substantially the facts upon which said ownership, right, interest or claim is based and of which it consists; and the district court shall thereafter at a regular term thereof investigate the same, and try said cause in accordance with the laws of nations, the laws, usages and customs of the government from which such said ownership, right, interest or claim emanates or is derived, and the constitution, laws and treaties of the United States of America, and of this, the State of Texas, and the principles of equity, so far as the same are applicable, and if in accordance therewith, the plaintiff (or plaintiffs, as the case may be) shall by a preponderance of the testimony show that he is entitled thereto, shall give judgment in favor of such plaintiff or plaintiffs, against the State in favor of and in confirmation of the title to said land, describing the same by metes and bounds, or in favor of the State against such claimant or claimants, as the facts may warrant."

Section 11. "The Attorney General of this State is hereby directed and required to institute and prosecute, in the name of the State of Texas, such suits as may be necessary to recover from the person or persons in possession thereof or claiming title thereto, all lands which are held or claimed under titles emanating from the

Spanish or Mexican governments where no valid evidence of such grants are to be found in the records or among the files of the General Land Office; and also such suits as may be necessary to determine the exact location and boundaries of such lands, where the evidence on file in the General Land Office does not sufficiently identify the land claimed; and such suits shall be brought, prosecuted and tried in the district court of Travis County, Texas."

The petition of the State filed in the trial court alleged that the defendant therein, plaintiff in error, was a resident of the City of Nuevo Laredo in the Republic of Mexico. Before answering to the merits in the trial court the defendant, plaintiff in error, filed his petition for the removal of said cause to the Circuit Court of the United States upon the ground that defendant was at the time of the commencement of said suit and the presentation of his petition an alien and subject of the United Kingdom of Great Britain and Ireland and a resident of the City of Nuevo Laredo, in the State of Tamaulipas, in the Republic of Mexico; and that the matters in dispute in said suit, and for which it was brought, exceed in value two thousand dollars, exclusive of costs. Upon the hearing of said petition for removal, the plaintiff excepted to the same upon the ground that it appears therefrom "that the State of Texas is the plaintiff in the cause sought to be removed and the law does not authorize the transferring of a case in which a sovereign State is plaintiff to a United States court; said State not being a citizen of any other State." The trial court sustained said exception and entered an order refusing the application and petition for removal. Plaintiff in error then filed his plea to the jurisdiction of the court, which was overruled. Thereupon he entered the following plea, viz:

1st.

Plea of not guilty and general denial, by which he claimed the title to and possession of said land.

2nd.

A claim of title under and by virtue of a grant from the government of Spain to Joaquin Galan, duly made in the year A. D. 1767, or about that time, which grant was recognized and confirmed by a judgment of the district court of Webb County, Texas, duly given and made on the 13th day of March, 1872, in a suit for con-

firmation of title, wherein Daniel Ruggles was plaintiff and the State of Texas defendant, instituted and prosecuted under and by virtue of an Act of the Legislature of Texas approved February 11, 1860, entitled "An Act to ascertain and adjudicate certain legal claims for land against the State situated between the Nueces and Rio Grande rivers."

3rd.

A claim of title under and by virtue of the Act of the Legislature of the State of Texas approved April 4, 1881, entitled "An Act to authorize and require the issue of the patents to land situated between the Rio Grande and Neuces rivers, the titles to which have been confirmed under the Act of February 11, 1860," which Act of April 4, 1881, ratified and confirmed said judgment of the district court of Webb County of March 13, 1872, and which operated as a grant from the State to plaintiff in error.

4th.

A claim of title by adverse possession, under claim of right and title, for a period of more than ninety-six years by plaintiff in error and those under whom he claims; which long and peaceable possession raises the presumption of a grant from the sovereignty of the soil.

5th.

A claim of title by estoppel; that the State of Texas is estopped by her long acquiescence in the said judgment of the district court of Webb County of March 13, 1872, without any action for its reversal, and by her acceptance from plaintiff of all State taxes assessed by State authority against the land in dispute amounting to the sum of $4500.

6th.

A claim of the title under and by virtue of the judgment of the district court of Webb County, Texas, rendered on the 8th day of January, 1862, in a suit for confirmation of title entitled Daniel Ruggles v. The State of Texas, by which judgment it was recited and decreed that the land in dispute was donated and granted to the settlers of the town of Palafox about the year 1810; and that plaintiff in error had acquired and held the title of the said grantees.

7th.

A claim of outstanding title in the settlers of the said town of Palafox or their heirs and assigns as evidenced by the recitals in said judgment of the district court of Webb County of January 8, 1862, rendered in the said cause of Daniel Ruggles v. The State of Texas (R., pp. 6 to 11).

The cause was submitted to the trial court for its decision upon the matters of fact, as well as of law, and on the 20th day of June, 1902, the court rendered a judgment in favor of plaintiff, the State of Texas, overruling the plea to the jurisdiction of the court, annuling any title of the plaintiff in error to said land and decreeing and vesting the title to the same in the State of Texas (R., p. 11).

From this judgment plaintiff in error prosecuted his appeal to the Court of Civil Appeals of the State of Texas, which court duly rendered a judgment reversing said judgment of the trial court and rendering judgment in favor of plaintiff in error for the title to and possession of said land, but holding in its opinion that the trial court did not err in refusing to order the removal of said cause to the Circuit Court of the United States. (R., p. 46.) From this judgment of the Court of Civil Appeals, the State of Texas prosecuted a writ of error to the Supreme Court of the State, which court reversed the judgment of the Court of Civil Appeals and rendered a judgment for the State of Texas for the title and possession of said land. (R., p. 67.) In its judgment overruling the motion for a rehearing the Supreme Court held that the trial court did not err in refusing to order the removal of said cause to the Circuit Court of the United States. (R., p. 80.) To secure a review of this judgment of the Supreme Court, plaintiff in error prosecutes this writ of error.

The evidence established the fact that under an Act of the Legislature of Texas of 1860 Daniel Ruggles instituted two suits in the district court of Webb County for the confirmation of the title to two large tracts of land, one of which is designated as the Palafox tract, and the other as the Balconcitas tract. The suit for the confirmation of the Palafox tract came to trial on the 8th day of January, 1862, and resulted in a judgment in favor of Ruggles for the confirmation of the title to a large tract of land, the southwestern boundary of which was six leagues of 5000 varas each from the

western bank of the Rio Grande river and parallel with it. In 1869, a motion was filed by Ruggles, seeking a construction and modification of the decree of the 8th of January, 1862, but it was overruled. In 1871 the other suit, the one for the Balconcitas tract, was dismissed by the court for the want of jurisdiction. In 1871 Ruggles made a motion to re-docket the two cases, which was granted; and at the same time, he filed a petition in which he sought to have the decree of 1862 set aside, and have a confirmation of the title to both the Palafox and Balconcitas tracts, but on the 8th day of March, 1872, these motions were refused. On March 12, 1872, Ruggles filed in the same court another petition, seeking to set aside the decree of the 8th of January, 1862. The court set aside the decree and consolidated the motions. On the 13th day of March, 1872, Ruggles filed an amended petition, in which he sought a confirmation of the title to both tracts, and upon which judgment was rendered in favor of Ruggles on the 13th of March, 1872.

The land which was covered by the decree of confirmation of 1862, was patented to Ruggles, and the State has not, in any way, questioned the validity of that judgment or of the title of those claiming under Ruggles, to the land. The land sued for in this case is located entirely on that portion of the land which the court in its decree of 1862 declined to confirm in favor of Ruggles, but is included within that which purports to have been confirmed to him by the decree of March 13, 1872.

The grounds set up in the application for the allowance of a writ of error are as follows, viz:

I.

"Before filing his answer in the trial court, defendant in error, who was defendant in the trial court and who will hereinafter be styled defendant, filed his petition and bond for the removal of the cause from the district court of Travis County to the proper Circuit Court of the United States, alleging as a ground therefor that he was a citizen of the United Kingdom of Great Britain and Ireland and a resident of the State of Tamaulipas in the Republic of Mexico, and that the matter in dispute exceeded in value $2000 exclusive of costs.

Without contesting the facts alleged the plaintiff, the State of Texas through its Attorney General, excepted to the petition for removal on the ground that the law does not authorize the removal of a suit in which a sovereign State is plaintiff and an alien is defendant. The trial court sustained this exception, and this court by its said judgment overruling the motion for a rehearing, affirmed this action of the trial court, and thereby rendered a decision against a right and privilege claimed by the defendant under the statutes and constitution of the United States, which right and privilege was especially set up and claimed by defendant."

II.

"This suit was prosecuted by the State of Texas, through its Attorney General as plaintiff, under and by virtue of the act of the Twenty-seventh Legislature of Texas, approved on the 9th day of September, 1901.

Section first of this act provides as follows: "Any person or "persons who may be the original grantee, heir, legal assign or— "any manner the legal owner or claimant of any grant, tract or "survey of land or part thereof, situated between the Nueces and "Rio Grande rivers, and below a line drawn from the northern "boundary of Webb County to the mouth of the Moros Creek where "the same empties into the Nueces River, and emanating or claimed "to have emanated from Spanish or Mexican governments, and "having its origin at such time as to be, and being within the pro- "tection guaranteed by the treaty of Guadalupe Hidalgo entered "into between the United States and Mexico, and proclaimed on "the 4th day of July, A. D. 1848, may file a petition in the dis- "trict court of Travis County, Texas, against the State of Texas, "as defendant, for the confirmation of title thereto, and also for "the adjudication of his, her, or their title, right and interest or "claim therein or thereto, as against the State, etc., and the dis- "trict court shall thereafter at a regular term thereof investigate "the same, and try said cause in accordance with the laws of na- "tions, the laws, usages and customs of the government from which "said ownership, right, interest or claim emanates or is derived, "and the constitution, laws and treaties of the United States and "of this, the State of Texas, and the principles of equity, so far as "the same are applicable, etc.

Section eleventh of said act, provides as follows: "The Attor-

"ney General is hereby directed and required to institute and pros-"ecute in the name of the State of Texas such suits as may be nec-"essary to recover from the person or persons in possession thereof "all lands which are held or claimed under titles emanating from "the Spanish and Mexican governments where no valid evidence "of such grants are to be found in the records or among the files "of the General Land Office, etc., and such suits shall be brought, "prosecuted and tried in the district court of Travis County."

This suit is an action of trespass to try title, filed by the Attorney General pursuant to said act, to recover the land in dispute, all of which is situated in Webb County, Texas, between the Nueces and Rio Grande rivers, and below a line drawn from the northern boundary of Webb County to the mouth of Moros Creek where it empties into the Nueces River, according to the boundaries and description thereof as set out in the petition of the plaintiff, the State of Texas.

Defendant in his answer pleaded a title to the land in dispute and described in plaintiff's petition, under and by virute of a grant of land from the Spanish government to Joaquin Galan, made about the year A. D. 1767, and prior to the year A. D. 1804. By this plea of title to land thus situated, defendant claimed to be the owner of a tract of land embraced in a "grant emanating or claimed to have emanated from the Spanish government and having its origin at such time as to be, and being within the protection guaranteed by the treaty of Guadalupe Hidalgo," by which plea defendant claimed a right, title and privilege under a treaty of the United States, and the decision of this honorable court was against the right, title and privilege thus specially set up and claimed by the defendant."

III.

"Defendant upon the trial of said cause in the trial court, pleaded to the jurisdiction of that court, alleging that the land sued for was situated in Webb County and that the district court of Webb County under Section 7, Article 5, of the Constitution of the State of Texas, had exclusive jurisdiction of said cause.

This plea was overruled by the trial court, to which action of the court defendant duly excepted and under his second assignment of error urged the proposition, viz: The jurisdiction of a State court in so far as it is fixed by the Constitution of the State is not subject to the regulation or control of the Legislature.

The action of the trial court in overruling said plea to the jurisdiction was sustained, and affirmed by this court by its judgment affirming "in all things" the judgment of the trial court.

By this action of the trial court and by the judgment of this cour, defendant's constitutional right to be sued for said land, if sued at all, in the district court of Webb County, was denied; his right being the same under the Constitution as citizens of said State who are sued for land in the county where the land is situated, whereby the defendant was denied the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States."

IV.

"Defendant by his answer in the trial court claims that his title to the land in dispute was confirmed by the judgment of the district court of Webb County of March 13, 1872, by which as against the State of Texas, the title to said land was confirmed to Joaquin Galan, his heirs and assigns under whom defendant claims said land.

The State of Texas never prosecuted any appeal from this judgment and it was recognized as a valid judgment by the commission of appeals in their judgment in Kennedy v. Jarvis (1 S. W. Rep., 191), which was affirmed by this court. In his said answer defendand claimed that the said judgment of the district court of Webb County was further ratified and, if invalid, validated by the Act of the Legislature of April 4, 1881.

The evidence shows that the defendant acquired the land after the rendition of said judgment of March 13, 1872, and after the passage of said Act of April 4, 1881, relying upon said judgment and act as rules of property; and that at the time of the trial of this case, he had himself been in adverse and peaceable possession of said land for more than twenty years, having paid $8000 for it and all taxes to the amount of $4500 without knowledge or notice of any claim of the State, by all of which defendant's right and title to said land became vested in him as against the State. That the judgment of this court holding that said judgment of March 13, 1872, is void and holding that said Act of April 4, 1881, did not validate the same, divests defendant of his vested right and title and deprives him of his property without due process of law and takes his private property for public use without just compensation

in violation of the Fifth Amendment of the Constitution of the United States."

V.

"Defendant in his answer in the trial court claimed title to the land in dispute under and by virtue of the judgment of the district court of Webb County of January 8, 1862. This judgment was introduced in evidence both by the State and the defendant upon the trial and was held to be a valid judgment by the trial court and this court; in this judgment of January 8, 1862, Daniel Ruggles, through whom the defendant claimed, was the party plaintiff, and the State of Texas was the party defendant. It is recited in this judgment that the land in dispute was granted by the government of Spain to Joaquin Galan sometime previous to 1804; that said Joaquin Galan sold said land to Manuel Garza who settled upon it and occupied it for many years; that about the year 1810 the government of Spain expropriated said land from said Manuel Garza for the purpose of establishing the town of Palafox and for the purpose of obtaining land for the use of the settlers of said town; that said town was settled and the said expropriated land lying above and below the same was "given and donated to the settlers in the shape of porciones."

In his chain of title set out in the record, defendant claimed under a deed executed March 17, 1855, conveying to Daniel Ruggles five porciones of this same expropriated land, according to the description of the deed, which five porciones would about equal in amount the land in dispute. The chain of title from that deed down to defendant is regular. He and those under whom he claims had been in possession of this land under a deed purporting to convey it for forty-eight years at the time of the trial in the lower court. This judgment of January 8, 1862, recognized as valid by this court, in reciting that this porcion land was expropriated and granted to the settlers of the town, taken in connection with this ancient deed conveying porcions of land out of the very land expropriated, furnishes the highest and most conclusive evidence of the regularity and validity of defendant's title. But the defendant pleaded in the trial court that if the title was not in him then it was outstanding in the settlers in the town of Palafox or their heirs and assigns; and as evidence of said outstanding title, defendant relied upon the recital in said judgment of January 8, 1862, that the land expropriated lying above and below said town was

given and donated to the settlers in the form of porciones. We also relied upon the uniform decisions of this court that the proof of an outstanding legal title is a sufficient defense in the action of trespass to try title. The State of Texas in the trial of this cause relied upon this recital that the land in dispute was expropriated by the former sovereignty of the soil. In order to have any claim to the land it was necessary for the State to rely upon this recital, because the previous recitals in the judgment showed that the land had been granted to Joaquin Galan and thus severed from the public domain. The recital that the land was expropriate, upon which the State relied, and the recital that after its expropriation it was given and donated to the settlers of the town, upon which the defendant relied, appear in the same sentence in the judgment.

Defendant relied upon the fact that if one part of a sentence of a judgment is evidence, then another part of the same sentence relating to the same subject matter would be evidence also.

Defendant respectfully submits that this honorable court in its judgment overruling the motion for a rehearing practically held that the recital that the land was expropriated was evidence for the State, but that the recital in the same sentence that after its expropriation it was given and donated to the settlers was not evidence for the defendant and could not be used to prove outstanding title, by which ruling in a cause prosecuted under said act of the Legislature of Texas of September 3, 1901, defendant was deprived of a long established rule of evidence and was denied the equal protection of the law contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, the effect of which is to divest defendant of his vested right and title to said land and to deprive him of his property without due process of law, and to take his private property for public use without just compensation in violation of Fifth Amendment of the Constitution of the United States."

## COUNTER PROPOSITIONS UNDER ASSIGNMENTS OF ERROR.

### First Counter Proposition Under First and Second Assignments, Treated Together.

IN A SUIT IN A DISTRICT COURT OF THE STATE OF TEXAS FOR LAND LYING WITHIN THAT STATE, WHEREIN THE STATE OF TEXAS IS PLAINTIFF AND

THE DEFENDANT IS AN ALIEN AND A SUBJECT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND AND A RESIDENT OF THE STATE OF TAMAULIPAS, IN THE REPUBLIC OF MEXICO, THE DEFENDANT IS NOT ENTITLED TO HAVE THE CASE REMOVED TO THE UNITED STATES CIRCUIT COURT.

STATEMENT.

The plaintiff (defendant in error) is the State of Texas. (R., p. 1.)

The defendant, plaintiff in error, is an alien, a subject of the United Kingdom of Great Britain and Ireland, and a resident of the State of Tamaulipas in the Republic of Mexico. (R., p. 3.) His application for removal was denied. (R., p. 80.)

AUTHORITIES.

Act United States Congress of August 13, 1888, Supplement to the Revised Statutes of the United States, pp. 611 et seq.

Postal Telegraph Cable Co. v. Alabama, 155 U. S., 482.

State of Texas v. Thomas O'Conor, 96 Texas Rep., 492.

Garland & Ralston, Fed. Prac., sec. 156.

REMARKS.

Whatever may have been the rule prior to the Act of Congress of 1888, it seems clear that under that Act defendant was not entitled to a removal of the case, the plaintiff, the State of Texas, *not being a citizen of a State*.

FIRST COUNTER PROPOSITION UNDER THIRD AND FOURTH ASSIGNMENTS, TREATED TOGETHER.

WHETHER THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS, OR THE DISTRICT COURT OF THE COUNTY IN WHICH THE LAND IN CONTROVERSY IS SITUATED, ALONE, HAD AUTHORITY TO TRY AND DETERMINE THE QUESTION OF TITLE TO SAID LAND, IS A LOCAL OR STATE QUESTION UPON WHICH THE DECISION OF THE COURTS OF THE STATE OF TEXAS ARE FINAL, AND NOT SUBJECT TO REVIEW IN THIS COURT, NO FEDERAL QUESTION BEING INVOLVED.

STATEMENT.

The statute under which this suit was filed is hereinabove set out.

AUTHORITIES.

Bacon v. Texas, 163 U. S., 219.
Avery v. Popper, 179 U. S., 315.
Telluride Power Transmission Co. v. Rio Grande Western R. Co., 187 U. S., 569.
White v. Leovy, 174 U. S., 91.

REMARKS.

A decision of a State court of last resort adjudicating the jurisdiction of inferior courts of the State is final and conclusive upon that issue.

COUNTER PROPOSITION UNDER FIFTH, SIXTH, SEVENTH AND NINTH ASSIGNMENTS, TREATED TOGETHER.

1.

THE ACTION OF THE SUPREME COURT OF TEXAS IN HOLDING VOID THE JUDGMENT OF THE DISTRICT COURT OF WEBB COUNTY, TEXAS, OF MARCH 13, 1872, IN THE CASE OF DANIEL RUGGLES V. THE STATE OF TEXAS IS FINAL AND CONCLUSIVE AND WILL NOT BE REVIEWED BY THIS COURT.

2.

THE SUPREME COURT OF TEXAS HAVING FOUND AND HELD THAT THE JUDGMENT OF MARCH 13, 1872, IN THE CASE OF DANIEL RUGGLES V. STATE OF TEXAS, UNDER WHICH DEFENDANT CLAIMS THE LAND IN CONTROVERSY, WAS VOID, SAID JUDGMENT CAN NOT BE HELD TO HAVE VESTED IN HIM, OR IN THE PLAINTIFF RUGGLES UNDER WHOM HE CLAIMS, ANY RIGHT TO SAID LAND, AND HENCE THE JUDGMENT OF THAT COURT IN FAVOR OF THE STATE OF TEXAS DID NOT DIVEST DEFENDANT OF ANY VESTED RIGHT OR TITLE, NOR DEPRIVE HIM OF HIS

PROPERTY WITHOUT DUE PROCESS OF LAW, NOR TAKE HIS PRIVATE PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN VIOLATION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

STATEMENT.

The Supreme Court of Texas held the judgment of March 12, 1872, void (R., p. 68), as it had previously done in Texas & Mexican Railway Company v. Jarvis, 80 Texas Reports, 456, in a case in which citizens of Texas alone were parties.

The State of Texas has never questioned the title of Ruggles, or his vendees, to the land which was awarded to him by the judgment of January 8, 1862. (R., pp. 1-92.)

AUTHORITIES.

White v. Leovy, 174 U. S., 91.
California v. Holladay, 159 U. S., 415.
San Francisco v. Itsell, 133 U. S., 65.
Telluride Power Transmission Co. v. Rio Grande Western R. Co., 187 U. S., 569.
Lynde v. Lynde, 181 U. S., 183.
Gulf & Ship Island R. Co. v. Hewes, 183 U. S., 67.
Bacon v. Texas, 163 U. S., 219.
Quinby v. Boyd, 128 U. S., 489.
Merced Min. Co. v. Boggs, 3 Wall., 310.
Eastern B. & L. Assn. v. Ebaugh, 185 U. S., 114.
Taylor on Jurisdiction and Procedure of the U. S. Supreme Court, sec. 249, and cases cited.

FIRST COUNTER PROPOSITION UNDER TENTH AND TWELFTH ASSIGNMENTS, TREATED TOGETHER.

THE QUESTION AS TO THE EFFECT TO BE GIVEN TO THE JUDGMENT OF JANUARY 8, 1862, IN THE CASE OF DANIEL RUGGLES V. STATE OF TEXAS, AND AS TO WHICH OF THE RECITALS, AND AS TO HOW FAR SUCH RECITALS IN SAID JUDGMENT ARE BINDING UPON THE STATE OF TEXAS UPON THE ISSUE OF "OUTSTANDING TITLE," ARE LOCAL OR GENERAL QUES-

TIONS, AND THE JUDGMENT OF THE SUPREME COURT OF TEXAS THEREON WILL NOT BE REVIEWED BY THIS COURT, NO FEDERAL QUESTION BEING INVOLVED.

STATEMENT.

See general statement, supra; also opinion of Supreme Court of Texas (R., pp. 67-70), and opinion of that court on motion for rehearing (R., pp. 80-81).

AUTHORITIES.

Thayer v. Spratt, 189 U. S., 346, and cases cited.

Clipper Min. Co. v. Eli Min. & Land Co., 194 U. S., 220, and cases cited.

Semple v. Hagar, 4 Wall., 431.

Mining Co. v. Boggs, 3 Wall., 309.

Telluride Power Transmission Co. v. Rio Grande Western R. Co., 187 U. S., 569.

Jacks v. Helena, 115 U. S., 288.

East Tennessee, V. & G. R. Co. v. Frazier, 139 U. S., 288.

White v. Leovy, 174 U. S., 91.

Minder v. Georgia, 183 U. S., 559.

McKinney v. Carroll, 12 Pet., 66.

Maxwell v. Newbold, 18 How., 51.

Crowell v. Randell, 10 Pet., 368.

FIRST COUNTER PROPOSITION UNDER FOURTEENTH ASSIGNMENT.

WHETHER A GRANT SHOULD BE PRESUMED IS, PRIMARILY, A QUESTION OF FACT FOR A JURY, OR, IN THE ABSENCE OF A JURY, FOR THE TRIAL COURT. THE TRIAL COURT HAVING FOUND AGAINST THE DEFENDANT UPON THAT ISSUE AND ITS JUDGMENT HAVING BEEN AFFIRMED BY THE SUPREME COURT OF TEXAS THE QUESTION IS NOT OPEN FOR REVIEW BY THIS COURT.

STATEMENT.

Construing his answer most strongly for the defendant, his plea raised the question of a presumption of a grant. (Tr., p. 8. The

trial court found against the defendant. (Tr., p. 11.) The Supreme Court of Texas affirmed the decision of the trial court. (Tr., pp. 67-70 and 80-81.)

AUTHORITIES.

Same as under Tenth and Twelfth Assignments, treated together, and those under Fifth, Sixth, Seventh and Ninth Assignments, treated together.

SECOND COUNTER PROPOSITION UNDER FOURTEENTH ASSIGNMENT.

UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE BEFORE THE COURT, NO GRANT SHOULD BE PRESUMED IN FAVOR OF DEFENDANT.

STATEMENT.

See general statement of nature and result of the case.

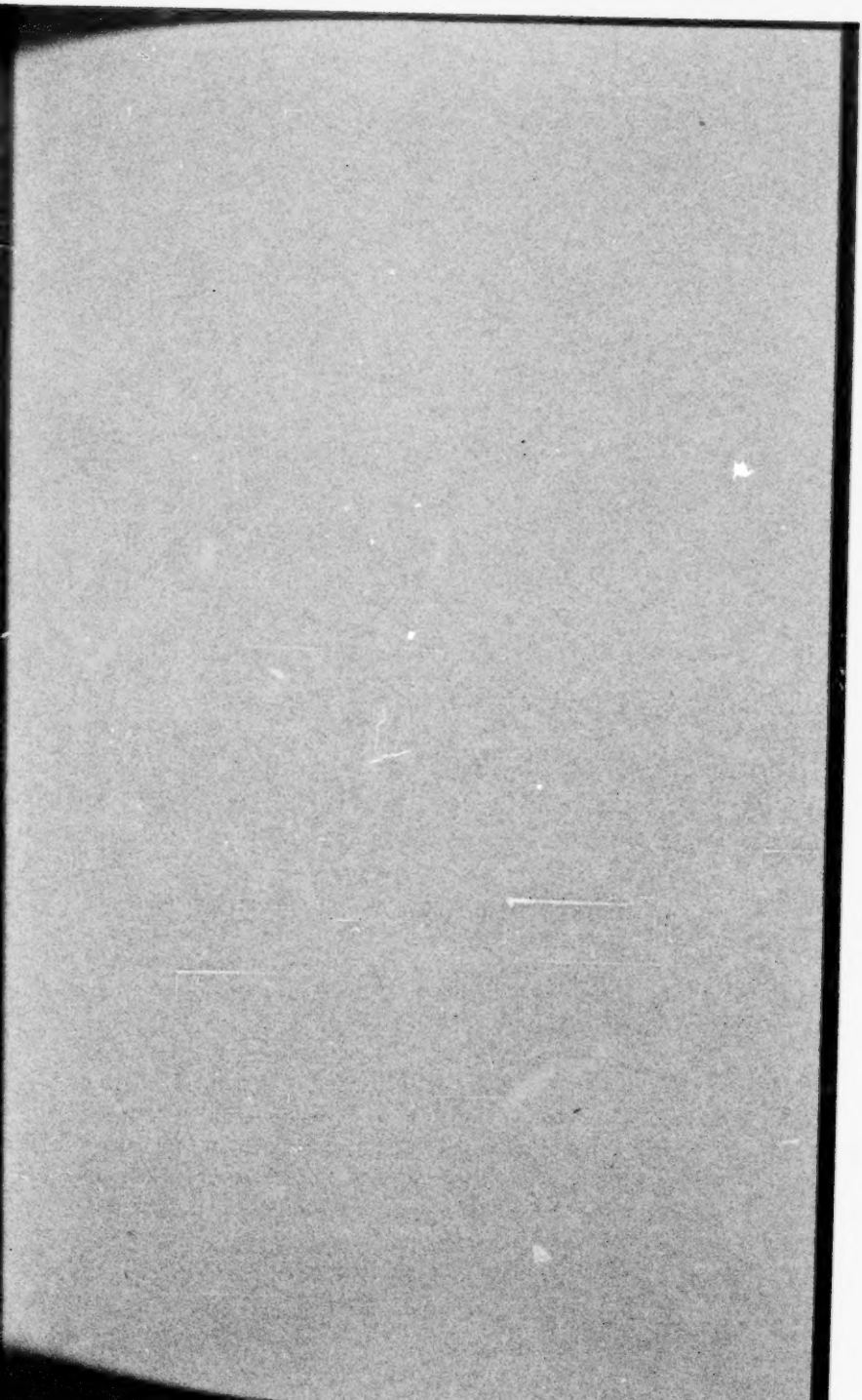
AUTHORITIES.

Crespin v. United States, 168 U. S., 218.
Chavez v. United States, 175 U. S., 563.
Hays v. United States, 175 U. S., 148.
Paschal v. Daingerfield, 37 Texas, 305.
Second White's Recopilacion, 562.

REMARKS.

We respectfully submit that, in the light of the opinion of the Supreme Court of Texas, the record in this case presents no question which should be reviewed by this court, and that, in any event, the judgment of the State court should be affirmed.

Charles K. Bell,
Robert V. Davidson,
Attorney General;
William C. Hadkins,
Assistant Attorney General of Texas,
Counsel for the State of Texas, Defendant in Error.



# Supreme Court of the United States.

No. 236.—October Term, 1905.

Thomas O'Conor, Plaintiff in Error, vs. The State of Texas. } In error to the Supreme Court of the State of Texas.

[May 28, 1906.]

Mr. Justice Brewer delivered the opinion of the Court.

On July 5, 1901, the State of Texas, under the authority of an act of its legislature, filed its petition in the District Court of Travis County against Thomas O'Conor, to recover possession of a tract of over nineteen thousand acres, situated in Webb County.

The defendant appeared and filed a petition for removal to the Circuit Court of the United States, on the ground that he was an alien domiciled in the Republic of Mexico. The removal was claimed under subsection 1 of section 639, Revised Statutes, but, as said by Mr. Chief Justice Waite, delivering the opinion of the court, in *Baltimore & Ohio Railroad Company* v. *Bates*, 119 U. S. 464, 467: "Subsections 1 and 2 of section 639 were repealed by the act of 1875; *Hyde* v. *Rubie*, 104 U. S. 407; *King* v. *Cornell*, 106 U. S. 395, 398; *Holland* v. *Chambers*, 110 U. S. 59; *Ayres* v. *Watson*, 113 U. S. 594."

Further, in *Fisk* v. *Henarie*, 142 U. S. 459, 466, it was held that the purpose of the act of March 3, 1887, (24 Stat. 552,) as corrected by the act of August 13, 1888, (25 Stat. 433,) was to restrict the jurisdiction of the Circuit Courts, and it was said (p. 468):

"The repealing clause in the act of 1887 does not specifically refer to these prior acts, but declares that 'all laws and parts of laws in conflict with the provisions of this act be, and the same are hereby, repealed.' The provisions relating to the subject matter under consideration are, however, so comprehensive, as well as so variant from those of the former acts, that we think the intention to substitute the one for the other is necessarily to be inferred and must prevail."

See also *Smith* v. *Lyon*, 133 U. S. 315; *Shaw* v. *Quincy Mining Company*, 145 U. S. 444; *Martin* v. *Baltimore & Ohio Railroad*, 151 U. S. 673; *Tennessee* v. *Union etc. Bank*, 152 U. S. 454; *Hanrick* v. *Hanrick*, 153 U. S. 192; *Mexican National Railroad* v. *Davidson*, 157 U. S. 201; *Missouri Pacific Railway* v. *Fitzgerald*, 160 U. S. 556; *Wabash Western Railway* v. *Brow*, 164 U. S. 271.

It is clear from these authorities that the petition for removal, which, as will appear, presented the only definite Federal question, was rightfully denied.

Thereupon the defendant filed an answer containing several defenses; a claim of title under and by virtue of a grant made in the year 1767, by the government of Spain to Joaquin Galan; a decree of the District Court of Webb County on March 13, 1872, in a suit for confirmation of title, wherein Daniel Ruggles, claiming to be the owner of the grant to Galan, was plaintiff and the State of Texas defendant, prosecuted under and by virtue of an act of the legislature of Texas, approved February 11, 1860; a confirmation of this decree by an act of the legislature of Texas of April 4, 1881; title by adverse possession under claim of right and title for a period of more than ninety-six years; title by estoppel, in that the State of Texas was estopped by long acquiescence from questioning the decree of the District Court of Webb County of March 13, 1872; title under and by virtue of a decree of the District Court of Webb County, Texas, rendered on January 8, 1862; and a claim of outstanding title in the settlers of the town of Palafox, or their heirs or assigns, as shown by the recitals in the last-mentioned decree.

The case was tried by the court without a jury, which rendered a judgment in favor of the State. From this judgment the defendant prosecuted an appeal to the State Court of Civil Appeals, which reversed the judgment of the trial court and ordered a judgment for the defendant. This judgment was taken to the Supreme Court of the State, which reversed the judgment of the Court of Civil Appeals, and, sustaining the decision of the trial court, entered a judgment in favor of the State.

It is obvious that most of the questions raised by the defenses are of a purely local nature, involving no Federal right. Some explanation may, however, be proper in reference to the decrees of the Webb County District Court. The record is somewhat obscure, but we take the facts to be as stated in the opinions of the Court of Civil Appeals and the Supreme Court. Under the law of 1860 Daniel Ruggles instituted two suits in the District Court of Webb County for confirmation of title to separate tracts of land, one designated as the Palafox and the other as the Balconcitas tract. One suit came to trial on January 8, 1862, and resulted in a decree in favor of Ruggles and a confirmation of his title to a large tract of land. In 1869 a motion was filed by him seeking a construction and modification of this decree of January 8, 1862, but it was overruled. In 1871 the other suit was dismissed for want of jurisdiction. The same year he made a motion to redocket the two cases, which was granted, and at the same time he filed a petition in which he sought to have the decree of 1862 set aside and a confirmation of title of both the tracts, but on March 9, 1872, these motions

were refused. On March 12, 1872, he filed in the same court another petition seeking to set aside the decree of January 8, 1862. This motion was sustained. On March 13, 1872, Ruggles filed an amended petition, in which he sought confirmation of title to both tracts, and upon this a decree was the same day entered in favor of Ruggles. The land which was covered by the decree of 1862 was patented to Ruggles and the State has not since questioned the validity of the decree or Ruggles' title. The land in controversy here is located entirely in that portion of the grant which the court, in its decree of 1862, declined to confirm in favor of Ruggles, but is included in that which purports to have been confirmed by the decree of March 13, 1872. The suits originally brought by Ruggles were authorized by special statute, to wit, the act of the legislature passed February 11, 1860. That act expired by its own limitations in 1865, and, as the Supreme Court of the State held, the District Court had thereafter no power to set aside the decree of January 8, 1862, or to enter the decree of March 13, 1872. The construction of the State statute and the power which it gave to the District Court of Webb County, and the length of time for the exercise of that power, are matters arising under State law, and the decision of the Supreme Court of the State is conclusive upon us and presents no question arising under the Federal Constitution. So the alleged confirmation of the decree of March 13, 1872, by an act of the legislature of 1881, is also a question arising in the construction of a State statute. The Supreme Court held that it applied only to those decrees which were rendered while the Webb County District Court had authority under the special statute, and did not apply to those which that court assumed to render thereafter.

So far as any defense is based upon the grant made by the Government of Spain in the year 1767, it involves no question of a Federal nature. Neither the validity nor construction of any treaty of the United States, nor the validity of the grant, were challenged. Indeed, it may be observed that during the progress of the case in the several State courts no appeal was made to the Federal Constitution, or to any acts of Congress save the one providing for the removal of cases from State to Federal courts.

It is apparent that the only Federal question which was presented, to wit, the right of removal, was correctly decided, and, therefore, the judgment of the District Court is

*Affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*